BASIS FOR PRICE NEGOTIATION: "MOST FAVORED CUSTOMER"

SUMMARY

GSA'S 1982 Multiple Award Schedule Procurement Policy states that the government's price negotiation objective shall be to "obtain a discount from the firm's established catalog or commercial price list which is equal to, or greater than, the discount given to that firm's most favored customer." As a starting point for negotiations, therefore, the contractor must certify that this prices are based on established catalog or market prices for commercial items. Offered items must meet all four criteria of being (1) commercial items (2) sold in substantial quantities (3) to the general public (4) at established catalog or market prices.

GSA follows the guidelines in both the FAR and the Armed Services Procurement Manual for Contract Pricing to determine if offered items meet the above criteria. According to the FAR, "commercial items" are supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations (FAR 15.804-3(c)(3)). An item is "sold in substantial quantities" when the quantities sold "are sufficient to constitute a real commercial market" (FAR 15.804-3(c)(4)).

The Armed Services Procurement Manual (ASPM) provides more specific guidelines for determining whether an item has been sold in substantial quantities to the general public. It states that substantial commercial sales occur when: (a) at least 55% of total sales are made to the public at catalog and noncatalog prices; and (b) at least 75% of all sales to the public are based on catalog prices.

The Government's goal when negotiating MAS contract pricing arrangement is to obtain a discount from a firm's established catalog or commercial pricelist which is equal to or greater than the discount given to that firm's most favored customer. The Most Favored Customer (MFC) discount is equal to the best discount given by a firm to any entity with which that firm conducts business. Consideration may be given to awarding an MAS contract where the Government's discount is not equal to or greater than a firm's MFC discount. This recognizes that there are situations where the Government's terms and conditions may be different from those given the firm's most favored customer. Offerors may cite factors that they claim make the Government different from other customers with which they do business. In these situations, it is the offeror who must provide information identifying such factors, the valuation of the factors identified and the method used for developing the valuation. Contracting officers must obtain information necessary to judge whether these factors and their valuation are reasonable.

Once the offered items have been verified to meet the test of commerciality, you will determine who qualifies as the offeror "most favored customer" using information supplied in the Discount Schedule and Marketing Data Sheet (DSMD). The most favored customer is determined by the data entered on Part B II a of the DSMD. This part of the DSMD asks the contractor to list his discounts and concessions to:

- dealers/retailers
- distributors/wholesalers
- educational institutions
- state, county, city and local governments
- OEMs
- other - e.g., national accounts, sales agreements

The customer category that receives the greatest discounts will be considered the offeror's most favored customer. You should then ask for a discount/pricing arrangement that is at least equal to -- and preferably better than -- the one the offeror has with his most favored customer.

Where an offeror markets through dealers or distributors, require the offeror to provide sufficient information on the functions or services that will be performed under the MAS contract, and to assign a monetary value to each of those functions. You should take the offeror's statement of each function's value into consideration when determining the negotiation goal.

In order to determine whether the dealer is in fact, the most favored customer, you will add the monetary value which the contractor has assigned to each dealer function to the dealer's price. You will then compare the resulting price to the prices the offeror gives his other categories of customers. If this comparison reveals that another category of customer receives a better discount (after the value of the dealer's functions is factored in) then that other category of customer will be identified as the "most favored customer" and their price will become the negotiation objective.

The government demands that most favored customer discounts be explicitly justified. Therefore the offeror should prepare for negotiations by identifying and assigning a value to each term and condition of the most favored customer's contract that results in a discount. If vendors can prove that the government is a significantly less favorable customer than their most favored customer, then the government will, theoretically, accept a discount that is less than that given to the most favored customer. But, the offeror must provide (1) information identifying the differentiating factors, (2) the dollar value place on the factors identified and (3) the method used for developing the valuation.

To illustrate, let's say the government identifies ABC Co. as the most favored customer. However, the offeror believes that the government's terms and conditions are such that it is not eligible to receive ABC Company's discount. The offeror could justify the greater discount given to ABC Co., in the following manner.

1. ABC Co. commits to $1 million worth of orders a year. This is worth a 10% discount.

2. Out of this $1 million order, deliveries are made just twice a year. This is worth a 7% discount.

3. ABC Co. pays for the freight. This is worth 10%.

4. The company does its own installation and has a person in-house who repairs any of the widgets that malfunction. This is worth 5%.

5. ABC Co. consistently pays its bills within 20 days. This is worth 3%.

References

FAR 15.804 - Price Negotiation
MAS Policy Statement
Section Y of Desk Guide
ASPM Chapters 2 and 13

PREPARATION FOR NEGOTIATION

There are three documents which together provide the basis and reasoning for the final recommendation concerning the disposition of a negotiated offer: Price/Discount Analysis, Prenegotiation Memorandum and Price Negotiation Memorandum. They are prepared in sequence, beginning with the price/discount analysis. The price/discount analysis compares what the vendor is offering the Government with the prices and discounts he offers to the rest of the world; the prenegotiation memorandum states what the Government expects to accomplish through negotiation; and the price negotiation memorandum summarizes what happened in the negotiation. As in all other procurement actions, the key to success is documentation.

EVALUATION OF PRICES AND DISCOUNTS OFFERED. By law, the Government cannot buy anything unless the price is fair and reasonable. The Contracting Officer is charged with the responsibility of determining what is a fair and "reasonable" price. There may be a lot of "experts" who help with the decision, but it is the CO who makes the final determination. A price analysis is required to establish whether offered prices are fair and reasonable. The degree of effort needed for price analysis depends upon the circumstance prevailing in the case. The FAR provides several techniques to use in performing price analysis:

(1) Comparison of price quotations received in response to solicitation.

(2) Comparison of prior quotations and contract prices with current quotations for the same or similar end items.

(3) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(4) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(5) Comparison of proposed prices with independent Government cost estimates (FAR 15.8Ø3(b)).

The price analysis determines what price will be fair and reasonable to pay, and, in negotiated procurement helps develop a price negotiation strategy. The options available to you after the price analysis is completed are products of the particular procurement method.

Because Multiple Award Schedule contracts are for commercial items, a considerable amount of time and effort is spent in examining the offeror's various discount arrangements both to the commercial market and as proposed to the Government. Although the process is virtually the same, generally a lot more work is involved in preparing a price analysis for a multiple award offer than in a negotiated single award. It is important, therefore, to allow sufficient time for analysis, documentation and negotiation of multiple award contracts in order to ensure timely awards. The initial administrative review needs to be accomplished quickly because the negotiator must give sufficient time and attention to price/discount analysis.

When you are establishing the priority for negotiation of multiple award offers, those offers which were found in the initial review to be complete -- all the blanks filled in and all the necessary price documentation included -- will get your attention first. You will probably start with those of the highest dollar value and greatest complexity, and work the simpler cases as time allows. Before a price/discount analysis can be written, the offer and related information must be reviewed carefully. Complicated offers may require extended and repeated review before you understand what is available to the commercial customers and what the Government is being offered.

MAS PRICE/DISCOUNT ANALYSIS

Some price analysis is done for all Government contracts, even those where cost and pricing data are used. Because MAS contract negotiation considers the discounts offered to the Government and to other customers, the price analysis includes an examination of the pricing developed; by discounting from various pricelists.

Once the contract negotiator is satisfied that the data available to the Government is sufficient to substantiate the reasonableness of commercial prices and has compared the vendor's offer to the Government with his commercial pricing plans, it is time to write a price/discount analysis.

The analysis synopsizes the discounts and major concessions offered to the Government and other customers in complete and clear language. If the vendor has a current contract, those discounts should also be compared with the new offer. All major discount arrangements extended to the vendor's commercial customers must be summarized and the apparent most favored customer (MFC) identified. If the negotiator does not believe the Government can qualify for the apparent MFC discount, the reasons for the determination should be planned in the analysis. The customer most comparable to the Government is then identified.

The analysis also briefly describes the types of items offered. Appropriate information, such as the most popular selling items, average price of items, and comparison of prices with those offered by other vendors of similar products, should be included.

Any cost and pricing data is summarized, along with the findings and recommendations contained in any preaward audit reports.

Letters and records of telephone conversations which serve to clarify deficiencies in the proposal or questionable items in the pricelist are referenced in the analysis. Contact records of meetings with vendors, in person or by telephone, show the names and titles of persons participating, the time and date and give brief, clear descriptions of the conversations.

The price/discount analysis is the conclusive explanation of the commercial discounts, terms and conditions, and therefore, depicts all of the essential contents, of the offer. The negotiator should not rely on memory, or assume that the file speaks for itself; rather, the negotiator must take the time to review and document the price/discount analysis completely. Doing so will make things much easier if, years later, anyone connected with the case is called to testify on behalf of the Government.

Prenegotiation Memorandum

The prenegotiation memorandum (preneg) is developed in conjunction with the price/discount analysis and describes the Government goals and objectives to be met before a contract can be awarded.

The major goal of the Government is to seek discounts and allowances which are equal to or better than those granted to the vendor's most favored commercial customer. (Remember the key to almost everything connected with MAS contracts is commercial practice.) The format of the preneg has six basic sections (listed below). Basic information can be preformatted.

1. General description of the procurement. This should be a brief account of the schedule number and title, the SINs offered by the vendor, the projected value of the offer, explanation of major significant changes in the solicitation and any other pertinent information.

2. Adequacy of data submitted by the offeror. The preneg addresses all offer deficiencies which specifically affect price and/or discount, and the attempts made to clarify or complete pricing data. This includes disclosure of all

deficiencies and/or omissions of pricing data required in the solicitation. Attempts to secure complete information required by the solicitation can be documented on a separate record action (contract records, letters) and incorporated by reference in the preneg. While many of these administrative actions are essential to award of a contract, detailed discussion of efforts to resolve questions concerning these actions need not be discussed in the preneg.

3. Elements of pricing analyzed prior to establishing negotiation goals. If a separate price/discount analysis is made, it may be incorporated by reference with major conclusions highlighted in this section. If the price/discount analysis is fairly simple, it and the prenegotiation memorandum may be one document.

4. Negotiation Objectives and Supporting Rationale. This section includes the negotiation goals and the justifications for those goals. The justifications vary from case to case but should be supportable from the facts present in either the Price/Discount Analysis or the Prenegotiation Memorandum itself. Every case has unique aspects and, therefore, different goals. There are however, some goals which are commonly sought:

Increased discount. Although, it may be that over a period of time, a good negotiator reaches a point where it is no longer possible to obtain better discounts from the vendor, those occasions are rare. The Government's goal is to be equal to or better than the most favored customer. The negotiator must acknowledge that the "better than MFC" goal might not be possible to obtain. The preneg, therefore, provides a "bottom line" goal below which award cannot be justified, and at least one interim goal between the high and low objectives. These goals must be based on sound logic. In addition, the goals, if successfully negotiated into the contract, should provide discounts that are easy for schedule users to understand.

Try to convert aggregate discounts to front end discounts. Aggregate discounts are of no particular interest to schedule users, and lower prices mean greater competitive advantage to the vendor. Believe it or not, some vendors dislike having monies derived from aggregate discounts going directly to the U.S. Treasury rather than to the ordering agencies. On the other hand, if the vendor doesn't want to increase basic discounts try for the aggregate discount.

Go for dollar volume or quantity break discounts, if the normal ordering patterns justify them. A quantity break for items that are purchased at a time means nothing; a very large discount on purchases that are never made has no value. If the vendor offers quantity breaks on one to four units and six to ten units, try for the higher discount on purchases from one to four units. Be sure the quantity and dollar volume discounts offered the Government and commercial customers can be compared. When the commercial customer gets a dollar volume break be sure you understand the value of both; it can be difficult to make such comparisons.

There are endless variations on possible discount arrangements. In the final analysis, discount concessions to the Government must be at least equal to the vendor's most favored customer.

Prompt Payment Discount (PPD). This discount can result in an additional front-end reduction in the Government price. If no Prompt Payment Discount is offered, make it a negotiating issue. There are advantages in Prompt Payment Discounts for the vendor as well as the Government. The possibility of being paid in less than the standard 30 to 45 days payment period should be worth something to the vendor. Consider carefully the time frame for which the PPD is offered. Because of the checks and balances of the Government accounts payable system, payments in 10 days or less are difficult to make.

Discounts base on that time frame are little else but window dressing. Be prepared to hear the vendor gripe about the Government's poor track record for timely payments. With the passage of the Prompt Payment Act, this is no longer true. The Act gives the vendor rights with regard to delinquent payments. With the risks removed, the negotiator should vigorously seek prompt payment discounts.

Blanket Purchase Arrangement (BPA) discount. All schedules encourage requisitioners to examine the benefits of blanket purchase arrangements. To illustrate the advantages of the BPA, the negotiator can present a proposed discount arrangement applicable only to BPAs. It might be in the form of special quantity or dollar volume discount to be applied to purchase orders placed against the BPA. Although individual purchase orders against a BPA may not exceed the contractual maximum order limitation (MOL), the aggregate sales made against the BPA may far exceed the MOL. The great advantage of the BPA is that individual purchases qualify for higher quantity discounts and often the highest discount available in the contract. BPAs are particularly applicable to consumable items where only approximate requirements are known. If no quantity discounts can be negotiated into the offer, the negotiator should at least try to establish special discounts for Blanket Purchase Arrangements.

The DSMD sheets request disclosure of information on the offeror's sales to the Government under schedule contract BPAs. The offeror is to state the total percent of his contract sales which have resulted from BPAs, and list the specific Government agencies which established BPAs. When BPA sales are indicated, the offeror should be requested to disclose the items covered under the BPA, the pricelist used, the projected and actual sales volumes, and the terms and conditions of the sale. With these ingredients a strong negotiation strategy can be developed designed to establish special discount concessions specifically applicable to BPAs.

That's right - special discounts for BPAs can be negotiated right into a multiple award schedule contract. In fact, it's highly recommended that at least an attempt be made to do so. The reasons are simple: When an agency uses an established schedule BPA, they save time and money - time because they're convenient, money because they reduce administrative costs and allow agencies to take advantage of higher level discounts when they have a rough approximation of their total requirements and want to place orders on an "as needed" basis. Thus BPA users can enjoy the maximum quantity discounts available to a requisitioner regardless of the individual purchase order made against the BPA. Although individual purchase orders placed against the BPA may not exceed the Maximum Order Limitation (MOL), the aggregate sales made against it may far exceed the MOL. Of course, these advantages are obtainable only on the contingency that the agency will have achieved an agreed upon purchase level by the time the BPA expires.

Here's another unique advantage: Special discounts for BPAs can be negotiated for aggregate quantities that exceed the MOL. This is why obtaining the additional information previously mentioned from an offeror who has had BPA sales is so important. By doing so, a negotiator can in effect monitor the buying habits of those that use the schedule, and in turn implement that information to establish negotiation thresholds and goals for not only BPA discounts, but quantity discounts as well.

Even the contractor benefits by having special discounts applicable to BPAs in his contract, and a good negotiator will illustrate these advantages to him. BPAs can save the contractor money. Orders placed under them can reduce his administrative costs since they are convenient to process. Special discounts applicable to BPAs for aggregate quantities which exceed the MOL can be extremely attractive to schedule users. And selling under BPAs poses little risk for the contractor. When a requisitioner does not achieve the projected volume of business, the contractor may bill him back at the price of the applicable quantity level.

BPAs can be in several forms, structured by quantity levels or dollar volumes, whichever is most suitable. This flexibility of arrangement, coupled with their attractiveness to both user and contractor, should make establishing schedule contract BPAs a high priority for a Government negotiator.

Delivery Terms. MAS contracts are for commercial items and in so far as possible incorporate standard commercial practices. Nevertheless, all MAS solicitations contain a Time of Delivery clause which indicates the delivery terms most acceptable to the Government. The vendors are also requested to insert a definite time within which delivery will be made. Sometimes the vendors delivery time exceeds what the Government requested. The negotiator should strive continuously to improve the delivery times for Government orders. This is especially true for items which the vendor has in stock and require no preassembly.

Besides seeking to improve standard delivery terms, try to negotiate a provision for quick delivery. Expedited delivery will cost more, but agencies sometimes have needs which must be satisfied promptly. As a service organization, FSS strives to make schedule contracts as responsive to requisitioners' needs as possible, and extra services such as expedited delivery can be helpful.

Scope of Delivery. Every solicitation has mandatory delivery provisions. Vendors who cannot comply with these provisions have unacceptable offers. MAS contracts are national in scope and provide for, at a minimum, delivery within the 48 contiguous states and the District of Columbia. Delivery to 50 states and Puerto Rico are additional benefits which could be considered.

Economic Price Adjustment. As consumers, we all recognize the advantage of not having to worry about increasing prices. The Government attempts through the use of firm fixed price (FFP) contracts to assure stable pricing for the Government throughout the contract period. Most of us have also experienced the effect of inflation on our personal "economies," so we must concede that some industries and products are subject to rapidly changing costs. To avoid having too large a "fudge factor" for possible price increases built into contracts where costs may change unexpectedly, there are firm fixed price contracts with economic price adjustment provisions (FFP/EPA). Although an economic price adjustment may be up or down, the EPA provision in MAS contracts addresses price increases; price reductions fall under the Price Reduction clause. Generally, when the economy is reasonably stable, and EPA clause is of little significance to either the vendor or the Government, and in all probability would not be included in single year contracts. Pricing in a multi-year contract, however, might be rather suspect without an EPA provision for the out-years of the contract. (Note, all MAS contracts contain a safety valve for both sides in that there is a 30-day cancellation clause.) There is more than one EPA clause; the EPA clause for MAS contracts limits the timing of price change. The EPA clause has real monetary value and should be used as a negotiating tool for improving discounts. Ceiling limitations and the number of allowable changes are also negotiatable.

Warranty. The minimum goal for warranty is the standard commercial warranty minus any objectionable provisions. There are also some additional provisions which can be negotiated; for instance, a longer warranty period, freight on items which are returned for warranty repair, free parts and labor, etc. From the consumer's point of view, we don't normally just pick a suit or dress from the rack and buy it. We compare quality, design, features, flexibility, etc., when we get as much as we can for our money. The same is true in negotiation. We know the Government needs a warranty, but don't take the first thing offered without checking out the possibility of getting something better.

Maximum Order Limitation (MOL). Use the maximum order limitation as leverage to create an incentive for the vendor to consider improving the discounts to the Government. Keep in mind that multiple award contracts are mandatory sources for many agencies, and that orders over the MOL are separate contractual actions. The convenience of placing orders against a schedule contract without the time consuming process which a new contract involves has great value to the Government and to the vendor - but particularly to the vendor, since an order in hand may well be lost to a competitor who was willing to negotiate for higher MOLs through better discounts. Submit a counter proposal of discounts adequate for the MOLs the offeror hopes to contract for.

Rental, Repair and Maintenance. Although schedules are basically for purchase, some schedule solicitations also allow rental, repair and maintenance services. These services are provided as a convenience to customer agencies and are usually nonmandatory. Nevertheless, an earnest attempt should be made to improve these arrangements, especially in those schedule contracts where the dollars for services account for a significant portion of sales. Review rental rates charged by the vendor. Compare the proposed rates to those charged by other suppliers. Does the basic rate cover use of the equipment for an eight hour shift or is use unlimited? What is the minimum rental period? Many vendors stipulate six months minimum rental. Strive for unlimited use at the basic rate and a guaranteed minimum rental period of 30 days. The actual value of these provisions is fairly simple to calculate, and they provide some areas where trade-offs can be negotiated lower monthly rates for equipment which is rented continuously through subsequent schedule contracts.

It is, of course highly desirable for the vendor to assume all installation charges. Discuss the conditions concerning movement of equipment once it is installed by the vendor. Will the Government be allowed to move the equipment.

If possible, negotiate provisions for the vendor to respond to repair calls and to make equipment operational in less than an eight hour work period. Also, penalties such as replacement of the unit with a new machine or credits against the monthly rate should be imposed against the vendor if the equipment is down more than ten percent of the time used.

Examine the rental agreement to determine who is liable for injury to persons and damage to Government property while the rented equipment is in use. If defective rented equipment is proven to be the cause of damage or injury, the vendor should be liable for consequential damages.

If the offer includes charges for termination or cancellation of the rental agreement, attempt to get the charges deleted. If the vendor is adamant about retaining these charges, try to keep them at a minimum. Since the Government cannot pay for something it does not receive, under no circumstances will termination or cancellation charges exceed the price which would have been paid for the period of actual rental had that been the original agreement, plus a reasonable charge representing the actual cost for removal of any equipment or supplies remaining at the time of termination. The negotiator shall not agree to the assessment of any penalty charge for termination of the agreement. Read the proposed rental agreement closely to assure that there are no hidden undesirable terms in the offer to the Government.

Look over the maintenance proposal carefully. Determine the vendor's responsibility regarding emergency calls, replacement, geographic coverage, price concessions for locations with multiple machines, and routine maintenance agreement cannot overlap any existing warranty period.

When repair is offered, examine the offer to determine that only new repair parts will be used, warranty for repaired equipment, the length of time between the call for repair and the arrival of the repairman, the repairman's travel time between the vendor's place of business and the Government site, minimum charges and after hour rate.

5. Major differences between the proposal and the negotiation goals. In as graphic a format as possible compare what is offered with what the Government would consider acceptable. Quantify differences and discuss possible areas of negotiation.

6. Reference any data or comments submitted by the vendor to support the offer, if it is less than the most favored customer discount. Your evaluation of the supporting data is also included in this section.

Finally, the negotiation objectives are approved by the Procurement Division Director, or whoever is designated to approve negotiation goals for the contracts of the value estimated.

NOTE: (1) The contracting officer shall clearly establish prenegotiation objectives before the negotiation of any pricing action.

(2) Incorporate a statement that all the administrative areas/problems have been resolved, for example Walsh-Healey, responsibility, subcontracting - EEO Clearance and adequacy of certifications.

There are several other sources that can be consulted for information on BPAs:

HB, FSS P 2901.2A, Change 3, Chapter 38, Paragraphs 40, 45, and 96.
FAR 8.406
PIB 89-6 in Section C

PREPARING A PRICE ANALYSIS RECORD

Why Prepare a Price Analysis Record?

To identify the scope of price analysis.

To translate price analysis findings into objectives for price negotiation.

To provide a foundation for the strategy to achieve price negotiation objectives.

To serve as a record for future price analyses.

What Should Be Included in a Price Analysis Record?

Information that was considered in the analysis.

Weight given to that information and why.

Logic supporting the contracting officer's determination of price reasonableness.

Soundness of that logic.

The length and detail in a price analysis depends on the nature of the procurement. The specific elements included depend on what it takes to establish reasonableness and what is available.

The information should be assembled into a logical conclusion concerning the reasonableness of the offered price. The analysis should indicate the item or service being procured, the current price for the item or service, the Government estimate, recent awards, other information collected, the weight given to data, the reason for discounting any data, comparability adjustments, and any assumptions made about the price reasonableness.

If the price analysis is sound and adequately summarized, you can go into negotiations feeling comfortable that you:

- Know the fair and reasonable price range,
- Can support your position with specific and convincing facts, and
- Can successfully refute contractor's arguments supporting higher prices.

FACTORS AFFECTING PRICE OBJECTIVES

Factor	Effect
Past and projected volume of sales; past and present dollar amount of purchases	Larger volume/amount usually means lower prices; lower income puts pressure on offeror. Smaller volume/amount might mean higher prices. Always consider total volume of added dollars, not just your order.
Current market conditions	*Seller's Market* – High demand weakens the Government's position. Inflationary market indicates higher prices. Buyer's Market – Excess industrial capacity can strengthen the Government's position.
Extent of competition	When competition is strong, prices tend to decline, benefiting the Government. When competition slacks off – and demand remains strong – advantage shifts to the seller. Expectations for lower prices are weakened.
Desire for Government business	An offerer eager for work can be expected to propose attractive prices. The relationship between idle capacity and fixed costs should indicate an offeror's need to secure business. Similarly, an offeror's interest may lag when he or she is operating at capacity.
Inventory	Offerer with an excessive inventory may lower prices to reduce inventory carrying costs.
Differences between Government and other buyers	Government's price should be lower because of assured and prompt payment, centralization, and volume of purchases.
Most-favored-customer determination	When the terms and conditions of a Government purchase are equivalent to the pricing arrangements a firm uses for its most-favored customers, the Government price should also be equivalent.

Special concessions, terms and conditions	If the Government demands extra concessions from the offeror, prices will tend to be higher. If the Government gives concessions to the offeror, prices should be lower.
Financing	Banks may give special concessions to firms holding Government contracts. These concessions may reduce the cost of doing business.
Product type	A mass-produced commercial product should be priced lower than one produced to Government specifications.
Price adjustment provisions	An offeror should accept lower prices when contract provisions reduce risk.
Urgency of purchase	Purchases requiring additional effort to meet short delivery schedules will normally command higher prices.

(5) Catalog price exemption. A catalog price exemption to the need for submission of cost or pricing data can be granted for products or services offered on MAS solicitations when the requirements set forth in subpars. (1) thru (4) above have been met. Section VII of the DSMD sheets provide the information to determine commerciality. This section permits offerors to certify to the commerciality of items offered under the solicitation. Along with this certification, offerors are required to submit sales information on a representative sample of the best selling items under the SIN. The information required is to be on the top-selling items based on Government sales. This information is used for two main purposes--to verify pricing practices, and to confirm commerciality. The contracting officer will establish the representative sample size in the solicitation. For items that the offeror cannot certify as commercial, sales information will be required for each item offered under the solicitation. The information provided will be used in determining whether an item should be exempt from the cost and pricing data requirement.

95. Preparing for negotiations. There are three documents that together provide the basis and reasoning for the final recommendation concerning the resolution of a negotiated offer: The price analysis, the prenegotiation memorandum, and the price negotiation memorandum. They are prepared in sequence, beginning with the price analysis. The price analysis compares what the offeror is offering to the Government relative to the offeror's commercial pricing/sales practices; the prenegotiation memorandum establishes the Government's negotiation objectives and overall strategy for obtaining these objectives; and the price negotiation memorandum provides a complete and accurate account of the negotiations. As with all other procurement actions, the key to success is documentation. These three documents must be made a part of the contract file, along with any other documentation that provides the rationale for the Government's negotiation position, clarifies any administrative areas, or was submitted by the offeror when less-than-MFC pricing was offered. (The amount of documentation will vary depending upon the complexity and estimated dollar volume of the offer.)

a. Negotiation objectives.

(1) When preparing for negotiations, the contracting officer will establish specific negotiation objectives based upon a properly prepared price analysis. A thorough price analysis will provide the contracting officer with the foundation and rationale for an effective negotiation strategy. A properly prepared price analysis should take into consideration all the elements contained in par. 93, as appropriate, as well as those in par. 94. The process of determining prenegotiation objectives must be done in accordance with FAR 15.807.

(2) In establishing negotiation objectives, contracting officers must always remain cognizant of the Government's goal in negotiating MAS contracts, namely, to obtain discounts equal to or better than the offeror's discounts to its most favored customer. However, the contracting officer must exercise judgement in establishing the negotiation objectives and in determining whether the negotiation objectives have been met. Negotiation objectives must be determined on a case-by-case basis based on the following considerations (see pars. 91, 93, and 96):

(a) All sales, discount, pricing, and marketing data submitted on the DSMD sheets;

(b) The overall volume of Government purchasing anticipated under a resulting contract;

(c) A comparison of the prices/discounts offered the Government with those granted to other customers of the offeror;

(d) A comparison of the terms and conditions under which the Government and the offeror's other customers contract; and

(e) The factors cited by an offeror that make the Government different from other customers.

b. Prenegotiation memorandum. The prenegotiation memorandum (preneg) describes the Government's goals and objectives that must be met before a contract can be awarded. It must be signed by the contract specialist with an approval and date line for the contracting officer and/or supervisor. The prenegotiation memorandum must contain:

(1) A general description of the procurement. This must include the schedule number and title, the SIN's offered, the projected value of the offer, an explanation of any significant changes in the solicitation, and any other pertinent information.

(2) Confirmation of the adequacy of data submitted by the offeror. All offer deficiencies concerning prices, discounts, and sales practices must be resolved prior to negotiations. All administrative deficiencies should be resolved as well. Any documentation used to either support the Government's negotiation position or clarify any administrative concerns should be incorporated by reference.

(3) The elements of pricing analyzed preparatory to establishing the negotiation objective. The preneg must contain or incorporate by reference the price analysis.

(4) The negotiation objectives and the supporting rationale. The contracting officer should establish a clear "going in" position. The objectives or goals of the negotiator should be distinctly reflected in dollar or discount terms.

(5) Major differences between the offeror's proposal and the negotiation objectives.

(6) The offeror's documentation and rationale if less than the MFC discount is offered. This will also include the contracting officer's evaluation of that data.

96. Negotiation factors.

a. Original Equipment Manufacturer (OEM) and dealer/distributor discounts. An integral part of the price analysis and the establishment of the Government's negotiation position is the consideration given to OEM's and dealers/distributors. Accordingly, appropriate information will be obtained from the offeror when an offeror sells to OEM's or dealers/distributors.

(1) The DSMD sheets require offerors to furnish information on their pricing and discount arrangements with dealers/distributors regardless of whether these entities will participate under the schedule contract.

(a) If dealers/distributors are an offeror's MFC, and the Government has not been offered a discount equal to or better than that granted to dealers/distributors, then the offeror is required to submit documentation supporting any factors cited by the offeror which make the Government different from this category of customer. Factors cited may include, but are not limited to, terms and conditions, services, functions, expenses, or participation under the proposed contract. Valuations of these differences must also be submitted along with the methodology used to develop them.

(b) In developing a negotiation strategy, the contracting officer must judge whether these factors and their valuations are reasonable. The contracting officer must weigh the similarities against the differences and arrive at a negotiation objective which is fair and reasonable to both the offeror and the Government, taking into consideration the conditions under which the Government buys. (See par. 91 and subpars. 93b(4) and (7).)

(2) The DSMD sheets require offerors to furnish information on their pricing and discount arrangements with OEM's. An OEM is generally defined as a supplier who manufactures and markets its own line of products. It would include those suppliers who obtain components to be integrated

into a system from other suppliers as well as suppliers who have a product or products manufactured by another company to be sold under the label of the first supplier.

(a) Examples of legitimate OEM's would be:

(i) A company that supplies electronic testing equipment manufactures most of the components of the system but buys an oscilloscope from another manufacturer. The oscilloscope would be "hard wired" into the system as an integral part of the system. Most likely the "inner workings" of the oscilloscope would be purchased, not the outer case.

(ii) A company that supplies duplicating equipment also provides sorters and joggers. The sorters and joggers retain the same configuration, outer case, and original manufacturer's brand name, but are hard wired and physically tied into the duplicator and are not able to be operated independently.

(iii) A company that sells copiers actually has them manufactured by another firm. The units are sold under the seller's brand name rather than the manufacturer's, the seller is responsible for all warranties and service, and for all intents and purposes, the units are sold as their own.

(b) Some examples of situations in which the supplier would not be considered an OEM are:

(i) A company that supplies electronic test equipment also offers a stand or rack (which is supplied by another manufacturer) on which the testing equipment may be placed. The equipment will work well placed anywhere and the table or rack is not an integral part of the system--it just looks nicer and is more convenient. The company would not be an OEM for stands and racks.

(ii) A company that sells duplicating equipment also sells staplers and laminators. The duplicating equipment is manufactured by the seller but the stapler and laminator are manufactured by another firm. The stapler and laminator operate independently, are not tied into the duplicating system, and carry the brand name of the manufacturer. The company would not be an OEM for staplers and laminators.

(c) When an offeror's MFC is an OEM, and the Government has not been offered a discount equal to or better than that granted to the OEM, the offeror will be required to submit documentation supporting the following:

(i) The entity is, in fact, an OEM; and

(ii) There is considerable difference between the item sold to the OEM and the item to be sold through the proposed MAS contract; or

(iii) There are factors which make the OEM's pricing and discount arrangements different from those offered to the Government. For example, an offeror may grant special pricing to an OEM because the OEM buys the product in a slightly different configuration, or with a different warranty, or in large quantities at one time. Valuations of any differences must also be submitted along with the methodology used to develop them. The contracting officer must judge whether these factors and their valuations are reasonable.

If, after analysis of the submitted documentation, the contracting officer determines that the OEM is legitimate and the item purchased by the OEM has been substantially transformed by the offeror, then the Government's negotiation objective will be the offeror's next best pricing arrangement. If, on the other hand, the item has not been substantially transformed by the offeror and the MFC is a legitimate OEM, the contracting officer must weigh the factors cited as differences, along with their valuations, and arrive at a negotiation objective which is fair and reasonable to both the offeror and the Government, taking into consideration the conditions under which the Government buys. (See a(1), above, par. 91, and subpars. 93b(4) and (7).)

b. Agents and sales representatives. Agents are not considered a "category of customer" for the purposes of the MFC negotiation policy since agents do not buy goods from the contractor but rather serve as a sales force. The same thing would apply to sales representatives.

c. Educational institutions. An "educational institution" is defined as a school maintaining a regular faculty and established curriculum, and having an organized body of students in attendance. It includes public and private primary and secondary schools, colleges, universities, normal schools, and technical schools.

(1) Where an offeror's most favored customer pricing arrangement is given to a customer or category of customers identified as "educational institutions" and the items are to be used for educational purposes, the Government's negotiation objective will be other than the pricing arrangement to the educational institution. The Government's negotiation objective under these conditions will be the offeror's next best pricing arrangement. However, to be considered for an MAS contract, the offeror must also offer the same pricing arrangement that it

grants to other educational institutions to the Government for its educational institutions when the items are to be used for educational purposes. This pricing arrangement must be maintained throughout the term of the MAS contract.

(2) When an offeror's most favored customer pricing arrangement is given to a customer or category of customers identified as "child-care centers," the Government's negotiation objective will be to obtain the same pricing arrangement for the Government's child-care centers.

d. State and local government. State and local governments sometimes receive the lowest prices offered by a supplier to any category of customer for several reasons. But one reason seems to be prominent--State and local government procurement activities can often identify their requirements and have the authority to require the State and local offices to use their contracts exclusively. A supplier, anticipating capturing the total business, is inclined to offer better prices than would be the case under a multiple award schedule. The Government's negotiation objective should not be based on State or local governments when the terms and conditions of those contracts are substantially different from those provided for in the Government requirements. However, if the volume of the purchases by State or local governments, individually or cumulatively, is small compared to the total volume of the Government's purchases, then notwithstanding the type of contracts involved, or differences in terms and conditions, the negotiation strategy should include comparable discounts for the Government.

e. Aggregate discounts.

(1) Discounts based on the estimated aggregate volume of sales (also known as the base figure) should be negotiated into a proposed MAS contract. (See subpars. 97b(1) and 118a.) When aggregate discounts are negotiated, special attention should be given to the base figure that would trigger them. The base figure should be reasonably attainable and is a matter for negotiation.

(a) For MAS contractors who have had previous contracts for the items being procured, the first step in estimating a base figure would be to check the quarterly GSA Form 72A sales reports submitted by those contractors. A base figure can then be projected by adjusting the total sales to the Government under the previous contract, taking into consideration the length of the previous contract relative to the length of the proposed contract, along with any other pertinent factors.

(b) In projecting a realistic base figure for new offerors, the following factors should be taken into consideration:

(i) The average annual volume of sales for the SIN's included in the offer;

(ii) The known dominant suppliers and percent of total sales for SIN's offered by these suppliers (if historically one or two suppliers account for the major percent of the estimated schedule sales, the new vendor can only reasonably expect to share in the remaining percentage);

(iii) The average unit costs of items offered by the vendor (if the average cost is $100 and the vendor estimates the base figure at $500,000, the Government would have to purchase approximately 5,000 units within the period of the contract in order to accumulate the base figure--considering the first two factors, is the proposed base figure reasonable?);

(iv) The number of offers received;

(v) The number of contracts awarded on the previous schedule for the SIN's included in the offer; and

(vi) The length of the proposed contract. Factors (iv) and (v) are also intended to help the contracting officer determine what percent of the estimated dollars (by SIN's) will be historically shared among the nondominant schedule suppliers.

(2) When developing negotiation objectives for discounts based on the estimated aggregate volume of sales, consideration may be given to taking such discounts at the end of the contract period (see par. 150), although it is preferred that these discounts be obtained when orders are placed.

(3) When it is not possible to obtain the end-of-contract concessions, negotiations should pursue increased "up-front" discounts that would apply throughout a contract period. Another alternative may be to negotiate a sales plateau that, when reached, would result in improved discounts for all Government customers. Negotiations may explore an arrangement whereby the contractor would reduce prices (increase discounts) for the remainder of the contract period to all Government customers when certain levels of purchases are reached. The following is an example:

Offeror ABC Co. had sales of $1 million under the most recent schedule contract. On the new offer, ABC proposes a 10 percent discount with no end-of-contract aggregate sales discount. Negotiations are unsuccessful in obtaining the aggregate discounts or improved "up-front" discounts. In place of either, negotiations may be conducted on obtaining additional discounts applicable to all subsequent sales as the contractor achieves certain sales plateaus, e.g., an additional 2 percent when sales reach $500,000; an additional 3 percent when sales reach $1 million; an additional 5 percent when sales exceed $1.5 million.

f. Maximum order limitation (MOL). All MAS purchasing/contracting arrangements will contain an MOL, and may contain variable MOL's for each SIN. The levels at which these MOL's are established will depend upon the concessions offered by the supplier and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of purchasing/contracting arrangements. The contracting officer will establish the MOL levels for the contract at the conclusion of negotiations. (See par. 34 and subpars. 97b(3), 98i, and 118a.)

g. Price reductions.

(1) All MAS contracts must contain clause I-FSS-390, Price Reduction. The Price Reduction clause is intended to maintain the relationship that was established at the time of award between the Government and offeror's customer or category of customer upon which the MAS contract was predicated. At the conclusion of negotiations, the contracting officer will identify the customer or category of customers upon which the MAS contract was predicated. In this regard, the Congress of the United States, including any of the offices or instrumentalities of the Congress, must not be identified as the basis of an MAS contract for purposes of the Price Reduction clause. This implements Pub. L. 98-63, Section 903 (2 U.S.C. 111b). Except for customers defined as "educational institutions" (see c. above), this is an offeror's only customer not eligible to be identified as the basis of an MAS contract.

(2) After the conclusion of negotiations, any changes in pricing practices by the contractor that result in a less-advantageous relationship between the Government and the customer or category of customers upon which the MAS contract was predicated must result in a price reduction to the Government to the extent necessary to retain the original relationship.

(3) Paragraph (b) of the Price Reduction clause (Pricing Reductions to Customers Other than the Federal Agencies) must not be applied to those contract items for which negotiation and award were based on factors other than the most favored customer evaluation technique, i.e., discounts from an established commercial catalog or pricelist from which substantial sales have been made to the general public at published prices. Examples of such factors would be awards based on cost or pricing data, or the awards based on lowest single unit net price as a result of identical items. Since these types

97. Negotiations.

a. Negotiations can begin upon completion of a properly prepared price analysis, establishment of the Government's negotiation objectives, and after obtaining required approval of the prenegotiation memorandum.

b. During the negotiations, Government negotiators will address the following:

(1) Obtaining aggregate discounts based on the estimated aggregate volume of sales under the proposed MAS contract, giving consideration to the Government's pattern of ordering. Failure to obtain satisfactory end-of-contract discounts, increased front-end discounts, or other favorable terms and conditions to the Government based on aggregate purchases will constitute grounds for not awarding a contract. (See subpar. 96e and par. 150.)

(2) Incorporation of an economic price adjustment clause into the proposed schedule contract, considering the uncertainty of prices for the contract term and the resultant improved discounts offered to the Government by the offeror for this price protection. The use of an EPA clause is a matter for negotiation. (See subpars. 62l, 96h, 98k, and 118a.)

(3) Establishing an MOL for the total dollar value of any order placed under the proposed contract and, where applicable, variable MOL's for each SIN. The level of these MOL's will depend on the concessions granted by the offeror. The MOL's established in the negotiation process must be documented at the conclusion of negotiations and included on the Standard Form 26, Award/Contract. (See subpars. 34b, 96f, 98i, and 118a.)

(4) For purposes of the Price Reduction clause, identifying the customer or customer category upon which the MAS contract is to be predicated when negotiation and award of items are based on the most favored customer evaluation technique, i.e., discounts from an established commercial catalog or pricelist from which substantial sales have been made to the general public at published prices. (See subpars. 96g, 98j, 118a, and par. 149.)

(5) All other negotiation objectives identified in the prenegotiation memorandum. (See pars. 95 and 96.)

c. The Government will negotiate a contract price relative to a vendor's commercial pricing/sales practices. Contracts will only be considered when a sufficient requirement exists for the type of product/service being offered, the terms and conditions stated in the solicitation are met, the prices/discounts are equal to or better than those offered to any other customer (taking into consideration any differences cited by the offeror), and the offeror meets all other solicitation requirements as to responsiveness and is determined responsible by the contracting officer.

d. "Best and final" offers must be obtained in writing at the conclusion of negotiations to confirm commitments agreed to, and to resolve any uncertainties relating to price/discount. For instructions on written or oral discussions and obtaining "best and final" offers, see FAR 15.610(c), FAR 15.611, and ASPM, chapter 8.2.

e. Whenever a decision is made to award an MAS contract when the Government's discount is not equal to or better than the MFC discount, the contracting officer will:

(1) Ensure the analysis and reasons for this decision are fully documented and justified in the procurement file; and

(2) Obtain approval for such a decision at a supervisory level higher than the contracting officer, regardless of the dollar value.

f. In all MAS contract negotiations, the contracting officer is required to make an affirmative determination that the prices negotiated are fair and reasonable (FAR 15.803(c)).

g. In the event that the Government's negotiation objective cannot be met, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs. (Also see subpar. 91e.)

98. Price negotiation memorandum. FAR 15.808 requires that a price negotiation memorandum (PNM) be prepared at the conclusion of each negotiation. The PNM is the document that brings together all the principal elements of the negotiation leading to the decision that the price/discount is fair and reasonable. In support of that decision, the PNM must contain the significant considerations shaping the pricing/discount arrangement. (See GSA Order, Contract Clearance (ADP 2800.1B).) These include:

a. A summary of the offer received (prices, terms, etc.), the Government's negotiation position (objectives), and the negotiation results. Any revised or adjusted offers and any revised or adjusted Government negotiation objectives must be documented and explained.

b. Names and titles (position) of the Government and contractor representatives who participated in the negotiations.

PREPARING A PRICE NEGOTIATION MEMORANDUM (PNM)

SUMMARY:

Once price/cost analysis has been completed, negotiations conducted, and a price agreement reached, the negotiated procurement process has nearly come full circle. Aside from any post-award pricing actions--such as those involved in contract changes, interim pricing arrangements, or close-out pricing requirements--only one final pricing-related step remains. The contracting officer must prepare a thorough and accurate account of the negotiations. Regulations require that it include certain designated information at a minimum, and that it become a permanent part of the contract file. This documentation is known as the price negotiation memorandum (PNM).

The definition of price negotiation memorandum provided in ASPM illustrates the importance of the document. The ASPM notes that a PNM is "the document that relates the story of the negotiation." It states: "[The PNM] is first a sales document that establishes the reasonableness of the agreement reached with the successful offeror. Second, it is the permanent record of the decisions the negotiator made in establishing that the price was fair and reasonable."

The PNM provides a reader who may lack direct knowledge of the contract with clear and concise information about the key issues affecting negotiations. The PNM tells the reader

- what the contractor proposed,
- what the price/cost analysis revealed,
- what happened in negotiations, and
- what was the basis for determining that the agreed-upon price was fair and reasonable.

In addition, a well-written PNM provides a clear audit trail that can save time and energy when a record of past contract actions must be reconstructed. Finally, the PNM can be used in future price analysis efforts. As a summary of the negotiation process, it can quickly illustrate what price analysis efforts were employed and how successful those efforts were. It can also illustrate problems encountered and provide insights that prevent repetition of past mistakes.

ELEMENTS OF AN ADEQUATE PNM

The Price Negotiation Memorandum should be detailed in its documentation of the negotiation process. The FAR provides guidance on the informational requirements to be included in the PNM.

FAR 15.808 states that the memorandum shall be included in the contract file and shall contain the following information at a minimum:

- The purpose of the negotiation. When negotiations are conducted, there must be a clear and definite purpose, which should be summarized in the PNM. The purpose may relate to price considerations, technical questions, a combination of the two, or some other issue relevant to specific terms and conditions set forth in the solicitation. If the contracting officer decides to award without discussions, this determination should be fully documented.

- A description of the acquisition. This description should include all identifying numbers (e.g., RFP No.) as well as a summary of the item or service being acquired.

- The name, position, and organization of each person representing the contractor and the Government in the negotiations.

- The current status of the contractor's purchasing system when material is a significant cost element.

- If certified cost or pricing data were required--

  - the extent to which the contracting officer relied on the cost or pricing data submitted and used them in negotiating the price; and

- the extent to which the contracting officer recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.

- If cost or pricing data were not required in the case of any price negotiation over $100,000, the exemption or waiver used and the basis for claiming or granting it.

- If certified cost or pricing data were required in the case of any price negotiation under $100,000, the rationale for the requirement.

- A summary of the contractor's proposal, the analysis of the contractor's price (and costs, if applicable), and the reasons for any pertinent variances from the conclusions reached through price/cost analysis.

- The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price, including an explanation of any significant differences between the two positions.

- An explanation of the differences, if any, between the results of price analysis and the final negotiated price.

As is evidenced by the FAR requirements summarized above, an adequate PNM should present a concise summary of all offers received. It should note any exceptions taken by offerors to the solicitation requirements. The PNM should state the Government's "going-in" position and the final negotiated terms, and justify any differences between the two. The PNM should identify any counteroffers made during the course of negotiations and should explain the Government's response to them. It should illustrate the scope of price analysis and, when applicable, the precise mix of price/cost analysis. In summary, the PNM must clearly show and support that the price negotiated is fair and reasonable. If the negotiated price is beyond the range established as a negotiation objective, appropriate reasons must be included.

A sample PNM is presented on the pages that follow.

REFERENCES:

FAR 15.808
ASPM 8-27 TO 8-34
GSA Order APD 2800.1B, Contract Clearance
FSS P 2901.2A, Change 2, Chapter 1,
Part 6, Section 1, Para. 64

equal to or better than those offered to any other customer (taking into consideration any differences cited by the offeror), and the offeror meets all other solicitation requirements as to responsiveness and is determined responsible by the contracting officer.

d. "Best and final" offers must be obtained in writing at the conclusion of negotiations to confirm commitments agreed to, and to resolve any uncertainties relating to price/discount. For instructions on written or oral discussions and obtaining "best and final" offers, see FAR 15.610(c), FAR 15.611, and ASPM, chapter 8.2.

e. Whenever a decision is made to award an MAS contract when the Government's discount is not equal to or better than the MFC discount, the contracting officer will:

(1) Ensure the analysis and reasons for this decision are fully documented and justified in the procurement file; and

(2) Obtain approval for such a decision at a supervisory level higher than the contracting officer, regardless of the dollar value.

f. In all MAS contract negotiations, the contracting officer is required to make an affirmative determination that the prices negotiated are fair and reasonable (FAR 15.803(c)).

g. In the event that the Government's negotiation objective cannot be met, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs. (Also see subpar. 91e.)

98. Price negotiation memorandum. FAR 15.808 requires that a price negotiation memorandum (PNM) be prepared at the conclusion of each negotiation. The PNM is the document that brings together all the principal elements of the negotiation leading to the decision that the price/discount is fair and reasonable. In support of that decision, the PNM must contain the significant considerations shaping the pricing/discount arrangement. (See GSA Order, Contract Clearance (ADP 2800.1B).) These include:

a. A summary of the offer received (prices, terms, etc.), the Government's negotiation position (objectives), and the negotiation results. Any revised or adjusted offers and any revised or adjusted Government negotiation objectives must be documented and explained.

b. Names and titles (position) of the Government and contractor representatives who participated in the negotiations.

c. The PNM must reference or incorporate the price analysis report.

d. Where cost or pricing data is required, the narrative should cover the products or services that require it, the source of the data, the analysis of the data, and its use in negotiations. Where the requirement for cost or pricing data is waived, the determination and findings in support of such waiver will be appended to the PNM. (See FAR 15.804-3(i), GSAR 515.804-3, and ASPM 13.5.)

e. The PNM should identify any preaward audit, preaward survey, or pricing assistance recommendations. When these recommendations are not followed, any alternate position must be documented and supported with factual data.

f. Any exceptions to the Government's terms/conditions and/or any special or nonstandard contract provisions will be documented.

g. The PNM will document the initial negotiation objectives and the actual negotiations, including the offers and counteroffers made by each party, with supporting rationale for all Government positions.

h. The document must clearly demonstrate and support that the price/discount negotiated is fair and reasonable. It must document any decision to accept less than the best pricing arrangement granted to the most favored customer. (See subpar. 97e.) The PNM should also identify the offeror's data used in the negotiation process.

i. The document will include the MOL levels established with supporting rationale. (See subpars. 34b, 96f, 97b(3), and 118a.)

j. The PNM should identify the customer or category of customers on which the award is recommended and on which the Price Reduction clause will be activated. (See subpars. 96g, 97b(4), 118a, and par. 149.)

k. If an EPA clause has been negotiated into the proposed contract, it must be identified in the PNM along with the items to which it applies. (See subpars. 62l, 96h, 97b(2), and 118a.)

l. The PNM should be signed and dated by the contracting officer as evidence that it is the official record of negotiations and that it complies with GSA policies and procedures.

PREPARING A NEGOTIATION MEMORANDUM

FAR 15.808 states that a Price Negotiation Memorandum (PNM) shall be included in the contract file and shall contain the following information at a minimum.

Part of the Memorandum	Content
Purpose of the negotiation	*For example:* price considerations, technical questions, special terms and conditions, or the fact that the award will be made without discussions.
Description of the acquisition	All identifying numbers and a summary of the product/service.
Participants in the negotiations	Name, position, and organization of each person representing the Government and the offeror.
Information on cost or pricing data	*If required:* How the contracting officer used and relied on these data, and any adjustments that were made as a result of incomplete or inaccurate data. *If not required:* The exemption or waiver used and the basis for claiming/granting it.
Summary of offeror's proposal and audit recommendations	Analysis of offeror's price (and costs, if applicable), audit recommendations, and reasons for any variances from the recommendations. [*See FAR 15.808 (a)(9).*]
Pre-negotiation objectives	The Government's price objective going into negotiations and the facts and considerations used to establish it.
Negotiation outcome	Explanation of the differences between the price objective and the final negotiated price.

PART 5. POST-AWARD PROCEDURES

118. Notice to contractor of contract awards.

a. Awards may be documented on either Standard Form 26, Award/Contract, or Standard Form 33, Solicitation, Offer and Award. MAS contracts must be documented on SF 26. This form must identify, when applicable:

(1) All SIN's awarded;

(2) All items accepted under each SIN;

(3) The dated, standard, commercial catalog(s)/pricelist(s) that contain the accepted items and to which the accepted Government discounts are applied;

(4) A summary of all discounts, pricing arrangements, and terms and conditions accepted by the Government;

(5) The base figure that will trigger any aggregate discount;

(6) All MOL levels (an MOL of "NONE" must be listed as such, but for MAS awards, only SIN's for rental, repair, maintenance, and leasing may have an MOL of "NONE");

(7) The minimum order limitation;

(8) The customer upon which the award was predicated and the Government's discount relationship to that customer; and

(9) The EPA clause(s) applicable to the contract and the items to which it applies.

b. SF 26 must incorporate, when applicable:

(1) The subcontracting plan;

(2) The "best and final" offer;

(3) Any correspondence from the offeror that changed the terms and conditions of the RFP;

(4) Correspondence from the offeror agreeing to extend the acceptance period of the RFP; and

(5) A statement regarding subsequent awards when the conditions described in GSAR 515.414 exist.

The signed award document and the original contract (signed offer) must be made a part of the contract file. (See par. 120.)

c. A written notification of contract award must be issued and a copy made a part of the contract file. The contracting officer and contract specialist are accountable for each contract file once award is made. Evidence of the receipt of the notification of award by the contractor must be documented in the contract file using one of the following methods:

(1) Mail the notification of award using certified mail with return receipt requested; or

(2) Have the contractor pick up the notification of award and sign a receipt.

No matter which method is used, evidence of the actual date of receipt of the notification of award by the contractor must be obtained by the contracting officer and made a part of the contract file.

d. MAS contractors are required to print and distribute a Federal Supply Schedule contract pricelist. The notification of award to these contractors must:

(1) Describe all procedures and instructions with which the contractor is contractually obligated to comply regarding the printing, formal publication, and distribution of the contract pricelist. Compliance with these obligations should be emphasized, as should the possible penalties for noncompliance;

(2) Identify the Government's rights as they relate to the contents of the contract pricelist, the reporting of contract sales, the inspection of any records pertaining to contract sales, and the certifications required by the I-FSS-600 clause series, Catalogs and/or Pricelists; and

(3) Put the contractor on notice that the accuracy of the information contained in the contract pricelist and the computation of its prices are their responsibility. While this does not relieve the contracting officer from the responsibility of ensuring that the contract pricelist complies with the applicable clause from the I-FSS-600 clause series (see par. 121.), it does preserve the Government's rights to legal remedies when misrepresentations occur. Remedies can range from reprinting and redistributing the contract pricelist to cancellation, default, and monetary recovery.

These obligations, rights, possible penalties, and responsibilities can be paraphrased in the body of the award letter, included in it by reference, or photocopied and attached. (See sample letter format shown in figs. 38-118.1, 38-118.2, and 38-118.3.)

e. To facilitate the contractor's preparation of the contract pricelist, one of the two dated, standard, commercial catalogs/pricelists that were submitted with the offer (as required by the I-FSS-600 clause series), and that contain the items and possibly the terms and conditions that have been accepted by the Government, must be returned with the notification of award. Before this is done, anything (e.g., items, warranties, delivery terms, restocking charges, installation charges, billing terms, order cancellation, minimum order amount, etc.) that has not been accepted by the Government, or that conflicts with the terms and conditions of the solicitation, must be obliterated or lined out in some acceptable manner from both copies by the contracting officer. Once this is accomplished, one copy of the commercial catalog/pricelist must accompany the notification of award, while the other copy must be made a part of the contract file.

(1) When MAS contractors are required by clauses I-FSS-600-D, E, or F to submit "proof" copies of the contract pricelist to the contracting officer prior to its formal printing and distribution, the contracting officer should:

(a) Withhold the applicable Federal Customer Mailing List from the contractor pending the contracting officer's review and approval of the submitted "proof"; and

(b) Ensure that the contents and format of the "proof" copies conform to the criteria listed in subpars. 121a(1) thru (5).

Once the "proofed" contract pricelists have been reviewed, one copy must be sent back to the contractor along with the applicable Federal Customer Mailing List, and one copy must be made part of the contract file. The contractor may now formally print and distribute his Federal Supply Schedule contract pricelist. (See sample letter format shown in figs. 38-118.1 and 38-118.2.)

(2) Fig. 38-118.3 shows a sample letter format when contractors are not required to prepare and submit a "proof" copy of their Federal Supply Schedule contract pricelist prior to its formal printing and distribution.

119. Other notifications of contract awards.

a. Commerce Business Daily (FAR 5.3).

b. Compliance with provisions of GSAR 505.303-70.

c. Regional Business Service Center, if a subcontracting plan is involved.

PRICE REDUCTION CLAUSE

SUMMARY

Of all the regulations and policies governing multiple award contracts, the price reduction provision is the one that is most controversial and most often misunderstood.

The clause seeks to ensure that the government maintains its negotiated price relationship vis-a-vis the prices the contractor charges other specified customers for the same products throughout the term of the contract.

Basically, the clause states that the price relationship between the government and the identified category of customer on which the contract is predicated must remain the same throughout the life of the contract. If the contractor lowers the prices in his pricing documents (i.e., commercial catalogs or pricelists) during the contract period, or sells any item covered by the contract at a price below the GSA contract price to the identified category of customer, then he must automatically give the government an equivalent price reduction on all subsequent government orders for the balance of the contract period or until the price is further reduced.

The following chart illustrates a situation in which the Price Reduction Clause would be triggered and the government would become entitled to a price reduction:

Customer Category	Unit Price When Schedule Contract* Negotiated	Unit Price After Reduction
End User	1.00	.90
Wholesaler	.80	.80
Government*	.95	.855

*The contract states that the government's price was negotiated base on the prices offered end users (5% discount).

**Contractor must give notice to the GSA that a price reduction has occurred and indicate the new price on its invoices.

By contrast, the following chart illustrates a situation in which the government would not be entitled to a price reduction under the 1982 clause:

GSA001552

Customer Category	Unit Price When Schedule Contract* Negotiated	Unit Price After Reduction
End User	1.00	1.00
Wholesaler	.80	.70
Government*	.95	.95

*The contract states that the government's price was negotiated base on the prices offered end users.

With regard to the second chart, it should be noted that the price reduction to the wholesaler should be reported to the contracting officer even though it does not trigger a Government price reduction.

Contractors should be aware that the price reduction clause can also be triggered when a contractor offers a product to a government agency within the maximum order limitation at a discount from the GSA contract. In this case, the contractor can be required to offer the lower price to all government customers for the duration of the contract period.

The above illustration is a relatively simple example of the possibilities for calculating a price reduction. The actual determination for any individual contract will depend on how the contracting officer interprets the actual facts and contract language involved.

Temporary Price Reductions

The contractor may offer government-only temporary price reductions. In this case, however, the price reduction must be in effect for a minimum of 30 days. There is no limit to the number of temporary price reductions that may be offered.

The contractor must inform the contracting officer in writing of the temporary price reduction within 10 days after the temporary price's effective date. The reports of price reduction must include an explanation of the conditions under which the reductions were made. The government will use information in the reports as a basis for negotiating the following year's contract.

Exemptions From Application of the Price Reduction Clause

GSA currently allows three exemptions to the application of the price reduction clause. They are:

1) reductions not disturbing the government's price relationship with the category of customer upon which the government's prices are base;

2) lower prices resulting from firm fixed-price definite-quantity contracts in excess of the schedule contract maximum ordering limitation; and

3) lower prices resulting from a documented error in quotation or billing.

With regard to the third exemption, it should be noted that the contracting officer is not required to exempt the error from application of the clause, but is merely permitted to grant the exemption. Thus, such an error could prove costly if the contractor is unlucky enough to have an unreasonable contracting officer. In general, however, it is advisable for contractors to contact their contracting officer immediately upon learning of the error and inform him that error was unintentional, that it was an isolated case, and that precautions have been taken to ensure that the error will not occur again.

This "come clean" attitude has served a number of companies well. They suffered no repercussions from the errors after acknowledging that they were made.

Implications of Post-Award Commercial Price Reduction

Once the GSA contract is negotiated and signed the contractor's GSA prices are fixed, unless a price change is initiated formally through a contract amendment. Under no circumstances can contractors offer to eligible government customers or identified commercial customers products or services at prices lower than those specified in their published government and commercial catalogs without formally notifying GSA within 10 calendar days.

If a government audit turns up pricing discrepancies, such that the identified class of customer on which the MAS contract was predicated received better prices than the government during the contract period, the government will demand that the contract holder "pay back the overcharged" sum -- a time consuming and potentially costly situation for the contract holder.

The price reduction clause has been the source of trouble for many contractors because it is often not understood how important this concept is. A company's sales staff or its participating dealers can trigger the clause if the ramifications of the policy are not clearly emphasized by the contract holder. It's important to remember that no matter who invokes that price reduction clause, the contractor holder is responsible for meeting the penalties.

Here are some facts surrounding the price reduction clause:

o The contract holder is held TOTALLY and SINGULARLY accountable for ALL sales made under its MAS contract, including those sales made by its branches, sales forces and its participating dealers, distributors, wholesalers and the like.

o The government audits contractors' pricing data to examine the pricing arrangements made by the contractor with his customers -- government and commercial. Auditors look for discrepancies between the prices offered to a company's customers -- to make sure the government is getting the most favorable prices/ discounts. No matter what marketing arm commits violations of the price reduction clause, the contract holder is responsible for paying price reduction penalties to the government. And, during audits, contract pricing records of all participants of the contract (dealers, distributors, wholesalers, and the like are open for government inspection.

Some examples of actions that trigger the price reduction clause:

o A manufacturer's participating dealer, distributor, wholesaler, etc. selling an item covered by the MAS contract to customers (federal or commercial) below the schedule contract price (within the MOL).

o A manufacturer's participating dealer, distributor, wholesaler, etc. selling an item covered by the contract on open market to a federal agency mandatory user of the schedule at a price lower than the price offered on the schedule contract (within the MOL.) (Manufacturers' participating dealers are supposed to know what items are covered by MAS contracts!)

o A manufacturer's commercial sales force selling items covered by the MAS contract (within the MOL) to its customers at prices lower than what is offered to the government on the schedule contract.

Some general observations about multiple award schedule contract holders:

o MAS contract holders do not take the price reduction clause seriously. It is a powerful and far-reaching contract provision, yet insufficient attention is given to it.

o Insufficient coordination and communication efforts are maintained between a company's commercial and government sales forces. While government sales figures may be lower than the commercial figures, the commitments made by a company's government sales division under a MAS contract period impact and influence the arrangements that can be made during that same period by the commercial sales force.

o MAS contract-holders do not educate their dealers, distributors, wholesalers, and the like sufficiently regarding the provisions and impact of the MAS contracts. For example, the existence of the price reduction clause restricts these manufacturers' marketing arms from executing a number of routine selling techniques, e.g., selling below contract price to attract new business, giving a preferred customer a "special deal," etc.

PRICE REDUCTION (I-FSS-390)

I. Price Reductions to Customers Other Than the Government include (a) lower prices in the commercial catalog/pricelist, or (b) higher discounts to the commercial customer upon which the award was predicated.

TIME FRAME	DURATION	EFFECTIVE TO GOVT.	NOTIFICATION DEADLINE
Temporary	Length Of Price Reduction	Instantly	10 Calendar Days After Effective Date (1)
Remainder Of Contract Period	Until Further Reduced	Instantly	10 Calendar Days After Effective Date (2)

(1) Contractor failure to notify C.O. of his "temporary" intention by this deadline shall require that the reduction apply to the contract for the remainder of the contract period, and may constitute Default.

(2) Failure to meet this deadline may constitute Default.

II. Price Reductions to Federal Agencies
Price reductions or higher discounts given to Government activities.

Temporary	At Least 30 Days	Upon Approval By C.O	(3)
Remainder Of Contract Period	Until Further Reduced	Instant Of Sale To Any Fed. Agency	10 Calendar Days After Effective Date (4)

(3) Not applicable if contractor has not initiated any sales at reduced prices to any Federal Agencies yet.

(4) The instant the contractor grants a price reduction to any Federal Agency, its duration shall be for the remainder of the contract period UNLESS the contractor notifies the C.O. of his "temporary" intention by this deadline. If this is the contractor's intention, and if this deadline is met, the duration of the temporary Government-Only price reduction will be at least 30 Days from the date of the C.O.'s approval. Failure to meet this deadline precludes the contractor's ability to claim a temporary price reduction, and may constitute Default.

acquires a significant measure of control over the contents of the contract pricelist. (See subpars. 93b(6) and 94b(1) for guidance in evaluating catalogs and/or pricelists submitted with an offer.)

66. Price reduction. All MAS solicitations, contracts, and resultant schedules must contain clause I-FSS-390. The Price Reduction clause is intended to maintain the relationship that was established at the time of award between the Government and the offeror's customer upon which the contract was predicated. (See subpars. 96g, 97b(4), 98j, 118a, and par. 149.)

67. Contract award sales criteria. Clause I-FSS-639 must be included in all MAS solicitations. (See par. 8.)

68. Cancellation. Clause I-FSS-690 must be included in all MAS solicitations. The clause provides for unilateral contract cancellation, in whole or in part, by either the Government or the schedule contractor, upon 30 calendar days written notice.

69. Modifications. Clause I-FSS-630-A or I-FSS-630-B must be included in all MAS solicitations. Clause I-FSS-630-B will enable contracting officers to restrict consideration of additional items (products/models) to 3, 6, or 9 month intervals, to be determined (and documented in the AP) by the contracting officer based on knowledge of the commodity, the workload, and the resources available to complete the work. (See par. 143.)

70. Economic price adjustment. GSAR clause 552.216-71 may be negotiated into single year MAS contracts at the time of initial negotiations contingent on the need (based on overall market conditions) and the concessions granted by the individual offerors. Use of this clause is restricted to those offers where the prices are negotiated on the basis of discounts from established catalog or market prices of commercial items sold in substantial quantities to the general public. The clause must not be used when cost and pricing data are required or the awards based on lowest single unit net price offered as a result of identical items. Under these circumstances, the contracting officer should refer to GSAR 516.203 for guidance on developing an appropriate clause. The development of any such clause must be coordinated through FCO for approval prior to its use. (See subpar. 621 for the use of an EPA clause in multi-year MAS contracts.)

71. End-of-contract additional discounts applicable to aggregate sales. Clause I-FSS-684 must be included in all MAS solicitations. (See subpars. 96e and 97b(1). See par. 150 for the procedures for collecting end-of-contract discounts.)

certain sales plateaus, e.g., an additional 2 percent when sales reach $500,000; an additional 3 percent when sales reach $1 million; an additional 5 percent when sales exceed $1.5 million.

f. Maximum order limitation (MOL). All MAS purchasing/contracting arrangements will contain an MOL, and may contain variable MOL's for each SIN. The levels at which these MOL's are established will depend upon the concessions offered by the supplier and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of purchasing/contracting arrangements. The contracting officer will establish the MOL levels for the contract at the conclusion of negotiations. (See par. 34 and subpars. 97b(3), 98i, and 118a.)

g. Price reductions.

(1) All MAS contracts must contain clause I-FSS-390, Price Reduction. The Price Reduction clause is intended to maintain the relationship that was established at the time of award between the Government and offeror's customer or category of customer upon which the MAS contract was predicated. At the conclusion of negotiations, the contracting officer will identify the customer or category of customers upon which the MAS contract was predicated. In this regard, the Congress of the United States, including any of the offices or instrumentalities of the Congress, must not be identified as the basis of an MAS contract for purposes of the Price Reduction clause. This implements Pub. L. 98-63, Section 903 (2 U.S.C. 111b). Except for customers defined as "educational institutions" (see c, above), this is an offeror's only customer not eligible to be identified as the basis of an MAS contract.

(2) After the conclusion of negotiations, any changes in pricing practices by the contractor that result in a less-advantageous relationship between the Government and the customer or category of customers upon which the MAS contract was predicated must result in a price reduction to the Government to the extent necessary to retain the original relationship.

(3) Paragraph (b) of the Price Reduction clause (Pricing Reductions to Customers Other than the Federal Agencies) must not be applied to those contract items for which negotiation and award were based on factors other than the most favored customer evaluation technique, i.e., discounts from an established commercial catalog or pricelist from which substantial sales have been made to the general public at published prices. Examples of such factors would be awards based on cost or pricing data, or the awards based on lowest single unit net price as a result of identical items. Since these types

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of conditions do not permit use of the most favored customer concept, no identification of a customer or class of customer is made. Accordingly, the above referenced paragraph of the Price Reduction clause is irrelevant.

(4) Contracting officers must show on the SF 26, Award/Contract, what customer or class of customers will activate the Price Reduction clause when the reduction is extended to other than a Federal agency. When the conditions of (3) above are prevalent, the SF 26 should indicate which items will not be subject to paragraph (b) of the Price Reduction clause. (See subpars. 97b(4), 98j, 118a, and par. 99. See par. 149 for information on the administration of the Price Reduction clause.)

h. Economic price adjustments. An economic price adjustment (EPA) clause will be used in FSS MAS contracts where uncertainty exists as to the stability of market prices during the term of the contract. The contracting officer will determine whether items under the MAS contract are subject to unforeseen price fluctuations, thus warranting the use of an EPA clause. The contracting officer's determination on the use of an EPA clause in an MAS contract is a matter for negotiation. An EPA clause has real monetary value and should be used as a negotiating tool for improving discounts. For example, the "aggregate of increases" ceiling, expressed as a percentage in EPA clause 552.216-71 (Alt I), is subject to negotiations and may be reduced. Likewise, the number of increases that this clause allows is subject to reduction through negotiation as well. (See subpars. 62l, 97b(2), 98k, and 118a.)

i. Delivery time. Delivery after the receipt of an order should be as expeditious as possible, and must be negotiated by taking into consideration the offeror's normal commercial practice for similar quantities of the same products. In addition, contracting officers must negotiate provisions for accelerated delivery times into all MAS contracts. Supplies and equipment should be shipped within a range of 24 to 72 hours after receipt of order in emergency situations. Large equipment should be shipped within the minimum time practicable in urgent situations.

j. Volume discounts and Blanket Purchase Agreements (BPA's).

(1) Negotiation objectives will be established to obtain volume discounts in line with the discounts available to the offeror's other customers. These volume discounts may be structured by quantity levels or dollar volumes. An effort should be made to obtain realistic, useful volume discounts relative to the Government's normal ordering patterns of the